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APPLICATION NO.	FI	LING DATE	FIRST NAMED INVENTOR Sukhdev Swami Handa	ATTORNEY DOCKET NO.	CONFIRMATION NO. 5091
10/073,548	(	02/11/2002		07064-012001 / 0820-NF236	
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FISH & R		SON PC	EXAMINER		
225 FRANKLIN ST BOSTON, MA 02110			MELLER, MICHAEL V		
				ART UNIT	PAPER NUMBER
				1654	$\sim$
				DATE MAILED: 07/15/2003	χ

Please find below and/or attached an Office communication concerning this application or proceeding.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _f MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  THE MAILING DATE OF THIS COMMUNICATION.  If the part of the right specified above is less than this (30) days, an apply within the statutory minimum of thirty (30) days will be considered timely.  If the part of the right specified above is less than this (30) days, an apply within the statutory minimum of thirty (30) days will be considered timely.  If the part of the right specified above is less than this (30) days, an apply within the statutory minimum of thirty (30) days will be considered timely.  If the part of the right specified above is less than this (30) days, an apply within the statutory minimum of thirty (30) days will be considered timely.  If the part of the right specified above is less than this (30) days, an apply within the statutory minimum of thirty (30) days will be considered timely.  If the part of the		Application No.	Applicant(s)					
Michael V. Meller  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ½ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ½ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  If the period for reply specified above is test than they (30) days, and reply the brindy litted safety 3th (s) MONTHS from the mailing date of this communication.  If the period for reply specified above is test than they (30) days, and the second period will apply and value of this communication.  If the period for reply specified above is the statement analytic period value layers (31) (A) MoNTHs from the maining date of this communication, even if timely fled, may reduce any sent against the reply second application of the second period will be considered to the communication, even if timely fled, may reduce any sent against the replication of the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of this communication, even if timely fled, may reduce any sent against the second period of the reduced to a condition of this communication.  Status  A) Claim (s) 1.58 is safe pending in the application.  4) Claim (s) 1.58 is safe pending in the application and for election requirement.  Application Papers  9) The proposed drawing correction fled to by the Examiner.  Application Papers  9) The proposed drawing correction fled on is a cocyted or by displ	•	10/073,548	HANDA ET AL.					
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1) Responsive to communication(s) filed on  2a) This action is FINAL. 2b) This action is non-final.  3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) Claim(s)	<ul> <li>THE MAILING DATE OF THIS COMMUNICATION.</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.1: after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If the period for reply specified above is less than thirty (30) days, a reply If NO period for reply is specified above, the maximum statutory period Failure to reply within the set or extended period for reply will, by statute.</li> <li>Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>	36(a). In no event, however, may a reply be ting within the statutory minimum of thirty (30) day will apply and will expire SIX (6) MONTHS from a cause the application to become ABANDONE	nely filed s will be considered timely. the mailing date of this communication. D (35 U.S.C. § 133).					
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## **DETAILED ACTION**

## Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- Claims 1-24, drawn to a composition, classified in class 435, subclass various.
- II. Claims 25-35, drawn to a method of making the composition, classified in class 424, subclass various.
- III. Claims 36-58, drawn to a method of using the composition, classified in class 514, subclass various.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially distinct process such as treating herpes.

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Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by a materially distinct process such as genetic engineering.

Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are capable of use together and have different effects.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

This application contains claims directed to the following patentably distinct species of the claimed invention: the many different components in the composition and the many different solvents, and other ingredients in the steps. Applicant is required to pick specific components to be in the composition or the specific solvents to be used as well as the other ingredients in the method of making the composition.

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Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 25, 36 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

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Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Michael V. Meller Primary Examiner Art Unit 1654

MVM July 1, 2003